These are the tentative rulings for civil law and motion matters set for Tuesday, November 27, 2012, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, November 26, 2012. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0052147 CACH, LLC vs. Killingsworth, Dirk

Appearance required. Plaintiff is advised that the court's tentative ruling procedures must be stated in the notice of motion. Local Rule 20.2.3(B). Plaintiff's Motion for Order Compelling Responses is granted. Defendant must provide verified responses, without objections, to the subject discovery by no later than December 18, 2012. Plaintiff's Motion for Order Establishing Admissions is granted. The requests for admissions shall be deemed admitted. Plaintiff's request for attorneys' fees is denied, as the notice of motion fails to cite the appropriate legal authority for the request for sanctions. Code Civ. Proc. § 2023.040; Local Rule 20.2.4(E).

2. M-CV-0052991 Gonzalez, Jose vs. Bajma, Jagvinder

Plaintiff and cross-defendant Jose Gonzalez's Motion For Relief is granted. When accompanied by an attorney declaration of fault, and filed within 6 months of entry of the order, relief is mandatory, and must be granted notwithstanding any other requirements of the statute. Code Civ. Proc. § 473(b). The Declaration of Jesse Ortiz attests to his own neglect in failing to file an answer to the cross-complaint served in March 2012. Mr. Ortiz is directed to pay reasonable compensatory legal fees in the amount of \$600 to defendant and cross-complainant Jagvinder Bajwa. Cross-defendant must file and serve his answer to the cross-complaint by no later than December 7, 2012.

3. S-CV-0027264 JB Development, LLC vs. Brelle West Const. Mgmt., et al

As a preliminary matter, the court notes that defendant Craig Hashimoto ("Hashimoto") filed a notice of non-stipulation to this Commissioner on August 31, 2012. However, as this Commissioner has previously heard motions in this case, Hashimoto is deemed to have already stipulated to this Commissioner for all matters other than trial per Local Rule 20.2(B). The notice of non-stipulation is untimely and ineffective.

Hashimoto's Objections to Evidence, Nos. 1-4 and 6, are overruled. Hashimoto's Objection to Evidence, No. 5, is sustained. Hashimoto's request to strike portions of plaintiff's response to defendant's separate statement is denied.

Hashimoto's Motion for Summary Judgment is granted. Summary judgment may be granted where it is shown that the action has no merit, and the evidence presented establishes that there is no triable issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(a), (c). "[T]he moving party bears the burden of persuasion that there is no triable issue of material fact that it is entitled to judgment as a matter of law." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries this burden, the burden shifts to the opposing party to make a prima facie showing that a triable issue of material fact exists. *Id.* The party against whom the motion is directed must produce substantial responsive evidence showing a triable issue of material fact. Code Civ. Proc. § 437c(b)(3); *Uhrich v. State Farm Fire & Cas. Co.* (2003) 109 Cal.App.4th 598, 616. It is not sufficient to raise issues as to the credibility of the moving party. *Trujillo v. First American Registry, Inc.* (2007) 157 Cal.App.4th 628, 632.

Plaintiff asserts a single cause of action against Hashimoto for professional negligence. To establish this cause of action, plaintiff must show "(1) a duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence." *Budd v. Nixen* (1971) 6 Cal.3d 195, 200.

Plaintiff fails to establish a triable issue of material fact as to whether Hashimoto owed a duty of care to plaintiff. Plaintiff's manager, Bradley Koach, attests to no personal knowledge of Hashimoto's actual involvement with respect to the plans drafted by GW Consulting Civil Engineers, Inc. ("GWCE"). Beyond a purported promise by Hashimoto that he would personally oversee the plan preparation, and/or personally be involved in the planning and design (Koach decl., ¶¶ 6, 9), plaintiff submits no evidence regarding Hashimoto's role in the drafting and creation of the subject plans.

Plaintiff also fails to establish a triable issue of material fact as to whether Hashimoto's actions breached any duty of care. Plaintiff submits the deposition testimony of its expert witness, Ronald Morris, to support its contention that work performed by Hashimoto's employer, GWCE fell below the standard of care for civil engineers. Mr. Morris testified that the civil engineering work fell below the standard of care because a swale or surface drain to control runoff was missing, and there was a lack of detail in the drawings for sub slab drains. (Morris dep., p. 90:13-24.) However, Mr. Morris has no knowledge as to what individuals were responsible for the civil engineering work performed on the subject project. As stated above, plaintiff presents no admissible evidence regarding Hashimoto's actual involvement with respect to the plans drafted by GWCE. Accordingly, plaintiff fails to produce responsive admissible evidence showing a triable issue of material fact with respect to two of the necessary elements of its negligence claim against Hashimoto, and Hashimoto is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(b)(3).

4. S-CV-0027433 Bellomy, John H. vs. Hunt, Terrie L.

The Motion for Orders re Property is dropped. No moving papers were filed.

5. S-CV-0027709 Fluken, Linda A., et al vs. Parkland Homes, Inc.

The Motion for a Good Faith Determination of Cross-Defendant Calhoun Construction, Inc. is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiffs' injuries, and therefore is in good faith within the meaning of Code of Civil Procedure sections 877 and 877.6.

6. S-CV-0029815 Wade, Jeremy, et al vs. Lee Institute of Plastic Surgery, et al

The Motion for Summary Judgment is continued on the court's own motion to December 18, 2012 at 8:30 a.m. in Department 40.

7. S-CV-0030117 Truckee - Highlands Syndicated Hldgs. vs. Northstar Comm.

Plaintiff's Motion for Summary Judgment is continued, on the court's own motion, to January 8, 2013 at 8:30 a.m. in Department 40, to be heard concurrently with defendant's Motion for Summary Judgment.

8. S-CV-0030195 Bellomy, John H. vs. Hunt, Terrie L.

Plaintiff John Bellomy's Motion for Orders is denied. As a preliminary matter, the motion is procedurally defective as the notice fails to state exactly what relief is sought and on what grounds. Code Civ. Proc. § 1010; Cal. R. Ct., rule 3.1110(a). The motion is supported only by declaration, and does not include a memorandum of points and authorities. Without such a memorandum, the motion is incomplete and cannot be granted. Cal. R. Ct., rule 3.1112(a).

Further, plaintiff fails to provide any legal support for the court's ability to make the orders requested regarding sale of the Penryn property, prior to trial of this partition action. Plaintiff provides no documentation to back up his claim for \$1,800 for repairs made to the Strawberry cabin. Finally, plaintiff's request that the court compel inspection of personal property cannot be granted as there is no evidence that plaintiff has ever formally demanded inspection of the property pursuant to Code of Civil Procedure sections 2031.020 *et seq.*

9. S-CV-0031113 Zygarewicz, Raya vs. Cernik, David G., D.D.S

Defendant David Cernik's Motion to Compel Deposition of Plaintiff is granted. Plaintiff Raya Zygarewicz claims that she is unable to appear for her deposition in the foreseeable future, based on worsening physical injuries and/or side effects from prescribed medications. Plaintiff's only evidence to support her inability to attend a deposition is her own declaration, and she provides no doctor's recommendations or diagnoses. Notably, plaintiff has proven herself to be

more than capable to engage in all other aspects of this litigation, as she herself notes in touting the need to respond to numerous discovery requests, engage in continuous meet and confer efforts, oppose discovery motions and demurrers, and file her own motions to compel. (Zygarewicz decl., ¶¶ 19-27.) Plaintiff did not object to the deposition notice, or move to quash the notice. Plaintiff is ordered to meet and confer with defendant regarding a mutually convenient date for her deposition, which in no event shall be later than December 28, 2012. Defendant is awarded attorneys' fees against plaintiff in the amount of \$390.

Defendant's Motion for Protective Order Regarding Plaintiff's Deposition is denied. Defendant fails to meet his burden of showing that allowing plaintiff's husband to attend the deposition would cause "unwarranted annoyance, embarrassment, or oppression ..." Code Civ. Proc. § 2025.420(b). Although plaintiff's husband may be present during the deposition, he is not entitled to testify, object to defendant's questioning, or ask his own questions of the deponent. Examination and cross-examination of witnesses at depositions should generally proceed in the same manner as at trial under the Evidence Code. Code Civ. Proc. § 2025.330(d). Nothing in this ruling would prevent defendant from renewing his motion for a protective order should plaintiff's husband improperly interject himself into the conduct of the deposition.

10. S-CV-0031403 Uzelac, Theresa, et al vs. North Fork Veterinary Clinic, et al

Defendants' Demurrer to the First Amended Complaint is overruled. The first amended complaint ("FAC") sufficiently alleges a cause of action for retaliation. Plaintiffs adequately allege that (1) they engaged in protected activity; (2) they were thereafter subjected to an adverse employment action by their employer; and (3) there is a causal link between the protected activity and the adverse employment action. *Morgan v. Regents of Univ. of Cal.* (2000) 88 Cal.App.4th 52, 62, 69. The acts complained of in the FAC could reasonably constitute violations of California law. (FAC, ¶¶ 14-19.) Plaintiffs adequately allege facts showing a causal link between the protected activity and the adverse employment actions. (FAC, ¶¶ 30-40.)

The FAC also sufficiently alleges a cause of action for wrongful termination in violation of public policy. Plaintiffs adequately allege that they engaged in an activity that is protected by public policy by complaining to defendants and Placer County Animal Control about cruelty to animals occurring at the North Fork Veterinary Clinic, that they suffered adverse employment actions, and a causal connection between the activity and the adverse employment action. (FAC, ¶¶ 24-40.)

11. S-CV-0031691 Flintco Pacific, Inc. vs. Skyline Steel, Inc.

Defendant Skyline Steel, Inc.'s request for judicial notice is granted as to Exhibits 1-3. Defendant's request for judicial notice is denied as to Exhibits 4 and 5, which do not constitute facts not reasonably subject to dispute and "capable of immediate and accurate verification by resort to sources of reasonably indisputable accuracy." Evid. Code § 452(h). Defendant's request for judicial notice in support of its reply is denied, as the court declines to consider additional evidence submitted by the moving party in its reply brief. The court has discretion to consider additional evidence only if the opposing party has an opportunity to respond. *Alliant*

Ins. Svc., Inc. v. Gaddy (2008) 159 Cal.App.4th 1292, 1307-1308. Defendant's demurrer to the complaint is overruled.

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. No other extrinsic evidence can be considered. *Ion Equip. Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881. Defendant references substantial extrinsic evidence in claiming that plaintiff lacks standing to bring this action, but the face of the complaint discloses no such defense. For the purposes of the demurrer, plaintiff adequately alleges a claim against defendant.

Based on the allegations of the complaint, Business and Professions Code section 7031 does not bar the action. The intent of Contractors' State License Law provision prohibiting unlicensed contractors from recovering compensation for performance of work requiring a license is to discourage persons who have failed to comply with the licensing law from offering or providing their unlicensed services for pay. Bus. & Prof. Code § 7031; *Montgomery Sansome LP v. Rezai* (2012) 204 Cal.App.4th 786, 793. Business and Professions Code section 7031 prohibits a person engaged in the business or acting in the capacity of a contractor from collecting compensation for the performance of any act or contract for which a contractor's license is required. Based on the allegations of the complaint, plaintiff did not offer or provide unlicensed services to defendant for which a license was required. Defendant also provides no case law which supports its contention that Section 7031 applies to the facts of this case.

Defendant must file and serve its answer to the complaint by no later than December 11, 2012.

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